

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION

JAMES E. DAVIS AND FRANCOIS KOHLMANN,  
INDIVIDUALLY AND ON BEHALF OF ALL  
OTHERS SIMILARLY SITUATED

PLAINTIFFS

vs.

CAUSE NO. 3:11-CV-093-MPM-SAA

ACA FINANCIAL GUARANTY  
CORPORATION, and  
JOHN DOES One through Ten

DEFENDANTS

**DEFENDANT ACA FINANCIAL GUARANTY CORPORATION'S UNOPPOSED  
MOTION FOR EXTENSION OF TIME TO ANSWER PLAINTIFF'S COMPLAINT**

Defendant ACA Financial Guaranty Corporation ("ACA"), through counsel, files this Motion for Extension of Time to Answer Plaintiff's Complaint. In support, ACA shows as follows:

**Procedural History**

1. Plaintiff filed his Class Action Complaint on July 15, 2011. (Doc. 1). In response, Defendant filed a Motion to Dismiss and Stay all Class Certification Proceedings. (Doc. 6). Plaintiff then filed a Motion to Amend his Complaint on November 21, 2011. (Doc. 17). The Amended Complaint was filed on January 10, 2012. (Doc. 22). ACA filed its second Motion to Dismiss and to Stay all Class Certification Proceedings. (Doc. 23). Plaintiff filed a Motion to Certify Class. (Doc. 39).

2. Following the New York Supreme Court's July 23, 2012 decision in *Oppenheimer v. ACA Financial Guaranty Corp.*, No. 653290/11 (N.Y. Sup. Ct. N.Y. Co.), Judge Mills ordered additional briefing from the parties. (Doc. 58). Consequently, the Court dismissed the pending Motion to Dismiss and Motion to Certify Class without prejudice and granted the parties an opportunity to submit revised motions in light of *Oppenheimer*. (*Id.*).

3. Pursuant to Judge Mills' opinion, Judge Alexander conducted an in-person status conference with counsel for ACA and Plaintiffs. (Doc. 63). The Court permitted discovery to commence, but instructed parties to focus initial discovery efforts on "issues related to the propriety of class certification". (*Id.*). Additionally, the Court ordered the parties to resubmit their motions by December 3, 2012. (*Id.*).

4. Both parties then propounded written discovery. (Docs. 65, 67, 69). Counsel for the parties agreed to stay discovery until after a decision on the appeal of the July 2012 New York Supreme Court in *Oppenheimer v. ACA Financial Guaranty*. (Doc. 81).

5. Pursuant to the Court's Order, on December 3, 2012 both parties filed revised motions. ACA filed its revised Motion to Dismiss. (Doc. 77). Plaintiff filed its revised Motion to Certify Class. (Doc. 80).

6. On April 9, 2013 the Court denied ACA's Motion to Dismiss and Plaintiff's Motion to Certify Class. (Doc. 89). The Court classified this litigation as "something of a sideshow to the 'main event' litigation in *Oppenheimer*." (*Id.* at p. 2).

7. According to Fed. R. Civ. P. 12(a)(4), ACA's deadline to answer Plaintiff's Complaint is May 23, 2013.

8. Counsel for ACA has conferred with counsel for Plaintiff and Plaintiff does not object to a one week extension of this deadline to May 29, 2013.

9. The relief requested herein will not prejudice either party and is made in good faith and not for the purposes of delay or harassment.

10. Because this joint motion is self-explanatory, ACA requests the Court to waive the requirement to file a supporting memorandum.

WHEREFORE, ACA moves the Court to extend the current deadline for it to respond to Plaintiff's Complaint until May 29, 2013.

RESPECTFULLY SUBMITTED, this the 21<sup>st</sup> day of May, 2013.

/s/Erin Saltaformaggio

David W. Clark (MBN 6112)

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Attorneys for Defendant ACA Financial Guaranty Corporation

**CERTIFICATE OF SERVICE**

I hereby certify that on May 21, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will deliver copies to all counsel of record.

/s/ Erin Saltaformaggio  
OF COUNSEL